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Traub Lieberman Partner Dana A. Rice and Associate Anthony L. Hatzilabrou Obtain Judgment in Favor of Plaintiff in Declaratory Lawsuit

Related Attorneys: Dana A. Rice, Anthony Hatzilabrou

Traub Lieberman Partner Dana A. Rice and Associate Anthony L. Hatzilabrou obtained judgment on the pleadings in favor of Plaintiff, an excess and surplus lines carrier (“Carrier”), in a case brought before the United States District Court for the Northern District of Illinois. Carrier sought a declaration that it had no duty to defend or indemnify its insureds, a nightclub (“Defendants”), in connection with a personal injury lawsuit arising out of a shooting at a nightclub owned and operated by the Defendants.

Carrier issued a commercial general liability policy to the Defendants which included, in pertinent part, an “Assault and Battery” Exclusion which stated that the policy did not apply to any claim or “suit” for “‘bodily injury’...arising out of, related to, or, in any way involving any actual or alleged assault, battery, harmful or offensive contact, or threat, whether provoked or unprovoked.” The District Court concluded that the Assault and Battery Exclusion unequivocally barred coverage for the underlying lawsuit, finding that it “appears beyond doubt” that the factual allegations of the underlying complaint could not even “potentially” escape the exclusion. The District Court concluded that, at a minimum, the shooting at issue constituted a “harmful or offensive contact” and thus fell squarely within the scope of the Assault and Battery Exclusion. The District Court also rejected the Defendants’ argument that the underlying lawsuit fell outside the Assault and Battery Exclusion because the claims in the lawsuit arose from the alleged inadequate security at the nightclub, rather than a shooting. Accordingly, the District Court granted Carrier’s motion for judgment on the pleadings, with a specific finding that Carrier had no duty to defend or indemnify Defendants in the underlying lawsuit. The Defendant elected not to appeal the decision.